

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Russo	Team: Squad #10	CCRB Case #: 202105563	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/18/2021 5:00 PM	Location of Incident: Fulton Street and Brooklyn Avenue	Precinct: 81	18 Mo. SOL 11/18/2022	EO SOL 11/18/2022	
Date/Time CV Reported Thu, 09/16/2021 3:18 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 09/16/2021 3:18 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mark Xylas	01685	948160	GVSD Z1
2. POM Aaron Husbands	04274	965752	079 PCT
3. An officer			
4. PO Benjamin Rodriguez	10403	965843	079 PCT
5. PO James Lester	00942	956839	079 PCT
6. DTS Jared Lambert	05221	960781	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Moses Lebron	09546	956831	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mark Xylas	Abuse: Sergeant Mark Xylas forcibly removed § 87(2)(b) to the hospital.	
B.SGT Mark Xylas	Force: Sergeant Mark Xylas used a non-lethal restraining device on § 87(2)(b)	
C.SGT Mark Xylas	Force: Sergeant Mark Xylas used physical force against § 87(2)(b)	
D.POM Aaron Husbands	Force: Police Officer Aaron Husbands used physical force against § 87(2)(b)	
E.PO Benjamin Rodriguez	Force: Police Officer Benjamin Rodriguez used physical force against § 87(2)(b)	
F. An officer	Force: An officer restricted § 87(2)(b)'s breathing.	
G.PO Benjamin Rodriguez	Abuse: Police Officer Benjamin Rodriguez damaged § 87(2)(b)'s property.	
H. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	
I. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
J.POM Aaron Husbands	Abuse: Police Officer Aaron Husbands threatened § 87(2)(b) with the use of force.	
K.POM Aaron Husbands	Force: Police Officer Aaron Husbands used physical force against § 87(2)(b)	
L.PO Benjamin Rodriguez	Force: Police Officer Benjamin Rodriguez used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.PO Benjamin Rodriguez	Force: Police Officer Benjamin Rodriguez used physical force against § 87(2)(b)	
N.PO James Lester	Force: Police Officer James Lester used physical force against § 87(2)(b)	
O.DTS Jared Lambert	Force: Detective Jared Lambert used physical force against § 87(2)(b)	
P.PO Benjamin Rodriguez	Abuse: Police Officer Benjamin Rodriguez searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

### Case Summary

On September 16, 2021, § 87(2)(b) filed this complaint with the CCRB via the On-line website.

On May 18, 2021, at approximately 5 p.m., § 87(2)(b) pulled over in the vicinity of Fulton Street and Brooklyn Avenue in Brooklyn, after calling 911 about three officers harassing him. § 87(2)(b) immediately exited his vehicle and stood in the street. Sergeant Mark Xylas, Police Officer Aaron Husbands, and Police Officer Benjamin Rodriguez, all of the 79<sup>th</sup> Precinct, exited an unmarked police vehicle and approached § 87(2)(b). After a brief conversation with § 87(2)(b), Sgt. Xylas called an ambulance for § 87(2)(b) given the possibility that he was emotionally disturbed (**Allegation A: Abuse of Authority: Threat to Remove to the Hospital**, § 87(2)(g)). As § 87(2)(b) moved away from the police officers, Sgt. Xylas deployed his Taser, and the prongs made contact with § 87(2)(b)'s left arm (**Allegation B: Force-Nonlethal restraining device**, § 87(2)(g)). Shortly after, Sgt. Xylas deployed his Taser at § 87(2)(b) a second time, with the prongs making contact with his lower back, on the right side (Subsumed within **Allegation B**). PO Husbands, PO Rodriguez, and Sgt. Xylas engaged in a physical struggle with § 87(2)(b) in the process of placing him in handcuffs (**Allegations C, D, and E: Force-Physical Force**, § 87(2)(g)). During the struggle, an officer allegedly made contact with § 87(2)(b)'s neck and restricted his breathing (**Allegation F: Force-Restricted Breathing**, § 87(2)(g)). PO Rodriguez ripped § 87(2)(b)'s T-shirt and allegedly the button of his pants (**Allegation G: Abuse of Authority-Property Damaged**, § 87(2)(g)). Either PO Husbands or PO Rodriguez called § 87(2)(b) a "monkey" (**Allegation H: Offensive Language-Race**, § 87(2)(g)) (**Allegation I: Discourtesy-Word**, § 87(2)(g)). Once the officers placed § 87(2)(b) in handcuffs, he was escorted to the rear of a marked police vehicle. Police Officer Jared Lambert and Police Officer James Lester, of the 79<sup>th</sup> Precinct, arrived on scene (PO Lambert has since been promoted to detective). PO Husbands, PO Rodriguez, PO Lester, and PO Lambert attempted to place § 87(2)(b) into the vehicle, and § 87(2)(b) resisted. PO Husbands drew his right arm back in a fist, replicating a punching motion toward § 87(2)(b) (**Allegation J: Abuse of Authority-Threat of Force**, § 87(2)(g)). The four officers attempted to push § 87(2)(b) into the vehicle, and when PO Rodriguez walked around to pull § 87(2)(b) into the vehicle from the opposite side of the vehicle, they were able to place him inside (**Allegations K, L, M, N and O: Force-Physical Force**, § 87(2)(g)). § 87(2)(b) was taken to the hospital to remove the Taser prongs.

PO Rodriguez drove § 87(2)(b)'s vehicle to the 79<sup>th</sup> Precinct stationhouse, given § 87(2)(b)'s arrest. He conducted an inventory search of the vehicle (**Allegation P: Abuse of Authority-Vehicle Search**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

The investigation obtained 17 Body-Worn Camera videos capturing this incident (**BR02**). The investigation will be discussing the following videos: PO Husbands' BWC (**BR01, BR03**), PO Rodriguez's BWC (**BR02, BR04**), and Sgt. Xylas's BWC (**BR02, BR05**).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Mark Xylas forcibly removed § 87(2)(b) to the hospital.**

Sgt. Xylas's BWC (**BR02, BR05**) captures the entire incident until after § 87(2)(b) is placed in the rear of the RMP. At the 00:53 mark, § 87(2)(b) exits his vehicle and walks to the middle of the opposite lane, as the officers exit their vehicle. § 87(2)(b) repeatedly asks what the officers want. Sgt. Xylas tells § 87(2)(b) to step "over here" multiple times and § 87(2)(b) asks what they want. At the 01:07 mark, Sgt. Xylas asks § 87(2)(b) if he is on medication, which § 87(2)(b) answers "yes."

§ 87(2)(b) denies. Sgt. Xylas tells § 87(2)(b) that he is acting irrational. At the 01:20 mark, vehicles can be seen approaching and stopping in traffic behind § 87(2)(b). At the 01:38 mark, Sgt. Xylas tells PO Rodriguez to call an ambulance. At the 02:25 mark, Sgt. Xylas tells § 87(2)(b) that he is going to go to the hospital due to his irrational behavior.

§ 87(2)(b) (BR06) stated that when he saw the officers approaching him from their vehicle, he immediately exited his vehicle without being directed to. Three officers exited the unmarked vehicle and approached him on the driver's side of his vehicle. They surrounded him, with one officer in front of him, and one on his left and right-hand side. One officer asked for § 87(2)(b)'s name, and he responded by asking what was going on. § 87(2)(b) described his tone as assertive but not aggressive or shouting. The officers stepped closer to § 87(2)(b) stopping about five feet away. None of the officers told § 87(2)(b) why he was pulled over. He crossed his arms in front of him and stood in place. He did not testify that anyone threatened to remove him to the hospital.

Sgt. Xylas (BR07) testified that upon § 87(2)(b) stopping his vehicle, he stepped out, leaving his driver's side door open, and walked into the middle of Fulton Street without instructions to do so from the officers. Fulton Street was a very busy commercial corridor, with heavy traffic in two directions at the time of this incident. § 87(2)(b) was standing on the double yellow line of a busy street, which was dangerous for himself, others, and the officers. The officers instructed § 87(2)(b) to move from the middle of the street. Traffic was stopped given the location of § 87(2)(b)'s vehicle, as well as his and the officers' presence in the middle of the street. § 87(2)(b) refused to comply with the officers' directives, stating "no" and "what do you want me to do." Sgt. Xylas asked § 87(2)(b) if he took any medication for mental health issues because of § 87(2)(b)'s irrational behavior. After speaking to § 87(2)(b) for a minute or two, Sgt. Xylas asked PO Rodriguez to call an ambulance, given that § 87(2)(b) was potentially emotionally disturbed. Sgt. Xylas told § 87(2)(b) that he was going to end up in the hospital for being irrational. § 87(2)(b) claimed to be perfectly sane.

PO Husbands (BR08) and PO Rodriguez's statements (BR09) were generally consistent with Sgt. Xylas's, regarding § 87(2)(b)'s behavior and the circumstances making the situation dangerous.

Patrol Guide Procedure 221-13 defines an emotionally disturbed person as someone who appears to be mentally ill or temporarily deranged as in conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others (BR11).

Sgt. Xylas's BWC captures § 87(2)(b) walking out of his car and stopping in the middle of a lane that had slowly approaching oncoming traffic. Despite being asked to move out of the street multiple times, given the dangerous conditions of standing in the middle of a road, § 87(2)(b) remained in place. § 87(2)(g) (b)

**Allegation (B) Force: Sergeant Mark Xylas used a non-lethal restraining device on § 87(2)(b).**

**§ 87(2)(b):**

**Allegation (C) Force: Sergeant Mark Xylas used physical force against § 87(2)(b).**

**Allegation (D) Force: Police Officer Aaron Husbands used physical force against § 87(2)(b).**

**Allegation (E) Force: Police Officer Benjamin Rodriguez used physical force against § 87(2)(b).**

**Allegation (F) Force: An officer restricted § 87(2)(b)'s breathing.**

**Allegation (G) Abuse of Authority: Police Officer Benjamin Rodriguez damaged § 87(2)(b).**

§ 87(2)(b)'s property.

Sgt. Xylas's BWC (**BR02, BR05**) shows that as he approaches § 87(2)(b) at the 02:40 mark, § 87(2)(b) steps back, toward the vehicles in traffic. At the 02:43 mark, § 87(2)(b) jumps backwards and swings his arm down, toward Sgt. Xylas after Sgt. Xylas grabs at § 87(2)(b) (shown clearly in the 02:50 mark of PO Rodriguez's BWC). Sgt. Xylas points his Taser at § 87(2)(b) and approaches him. § 87(2)(b) steps back and says to not touch him. PO Rodriguez also approaches § 87(2)(b) and both officers reach for him. § 87(2)(b) steps back, pulls his arms away, and escapes their grasps. § 87(2)(b) swings his arms around, apparently attempting to hit the officers if they made contact with him. At the 02:53 mark, § 87(2)(b) walks away and Sgt. Xylas deploys his Taser. The prongs make contact with § 87(2)(b)'s left arm. § 87(2)(b) rips the prongs from his skin. § 87(2)(b) steps away from the officers, running into multiple vehicles along the way. PO Husbands and PO Rodriguez hold § 87(2)(b) against the outside of an outdoor dining area. § 87(2)(b) repeats, "I'm about to start swinging on you bitches," as the officers struggle to hold his constantly moving body, which appears tense and stiff. At the 03:04 mark, Sgt. Xylas tells the officers to move, as he was going to use the Taser. He deploys the Taser again, and it is unclear where the prongs go. § 87(2)(b) moves his body away from the officers, stiffens his arms, and asks, "what do you want." PO Husbands and PO Rodriguez attempt to lift § 87(2)(b) and take him to the ground, but § 87(2)(b)'s resistance prevents them from doing so. By the 03:42 mark, officers have placed § 87(2)(b) in handcuffs. This footage did not capture § 87(2)(b) complaining of being unable to breathe, nor did it show any officers making contact with § 87(2)(b)'s throat or windpipe.

PO Rodriguez's BWC (**BR02, BR04**) shows, at the 03:04 mark, in the process of grabbing § 87(2)(b) after the Taser was ineffective, PO Rodriguez grabs the collar of § 87(2)(b)'s shirt, which causes it to rip.

§ 87(2)(b) (**BR06**) stated that, as he stood in the middle of the street, about five feet away from the officers, Sgt. Xylas deployed his Taser at § 87(2)(b) without warning. Sgt. Xylas did not mention using his Taser. The prongs hit § 87(2)(b)'s left arm, in the bicep area. After making contact for about a second, § 87(2)(b) pulled the prongs out of his body. Sgt. Xylas aimed to deploy the Taser again. § 87(2)(b) turned over his right shoulder, with his back facing Sgt. Xylas. Sgt. Xylas deployed the Taser again, and the prongs made contact with § 87(2)(b)'s right kidney area. He did not remove the prongs from his body after the second deployment. After the second deployment of the Taser, the officers approached § 87(2)(b) and began "man handling" him, which he described as attempting to bring him to the ground. PO Rodriguez and PO Husbands grabbed § 87(2)(b)'s upper body and attempted to "sweep [his] legs out from under him." The officers did not bring § 87(2)(b) to the ground. One of the officers may have made contact with § 87(2)(b)'s neck and restricted his breathing because he gasped once during the struggle. He could not specify when he gasped or who made contact with his neck, as he was disoriented after the Taser. At an unspecified point in the struggle with the officers, the shoulder area of § 87(2)(b)'s shirt was torn and falling off his body. The button of his pants was also ripped off. The officers' use of excessive force, while § 87(2)(b) was not physically moving, attracted a crowd to the scene. The three officers placed § 87(2)(b) in handcuffs, during which he was not resisting. Sgt. Xylas pulled § 87(2)(b)'s arms behind his back aggressively.

Sgt. Xylas (**BR07**) stated that, as § 87(2)(b) stood in the middle of the street, the officers walked around § 87(2)(b) to form a perimeter around him to prevent him from being struck by a vehicle. The officers used constant communication with § 87(2)(b) as a de-escalation technique. § 87(2)(b) stepped back, and Sgt. Xylas decided to place § 87(2)(b) in handcuffs, given that he was unpredictable and in the middle of the street. § 87(2)(b) told the officers to "get the fuck away from him" and "stop circling [him]." Sgt. Xylas attempted to grab § 87(2)(b) and § 87(2)(b) "swatted" him away without touching him, which Sgt. Xylas interpreted as a demonstration of § 87(2)(b)'s capability of using force. Sgt. Xylas unholstered his Taser, while 10 feet away from § 87(2)(b) and deployed his Taser, given that they were going toward the traffic. Sgt. Xylas did not

remember if he mentioned using the Taser prior to deploying it. He decided to use the Taser because it is the least amount of force to subdue someone from a distance. The Taser was ineffective, as § 87(2)(b) removed the prongs from his body and said, “get this shit off of me.”

PO Rodriguez and PO Husbands attempted to grab § 87(2)(b) but he resisted—pushing the officers, and stating that he would “swing” on them. Sgt. Xylas told § 87(2)(b) that he was going to deploy his Taser, which he did from a 10-foot distance. Sgt. Xylas was unsure where the prongs made contact, but the Taser was ineffective, once again, as § 87(2)(b) continued resisting. § 87(2)(b)'s lack of reaction to the Taser increased Sgt. Xylas's concern regarding § 87(2)(b)'s mental condition, given that certain drugs can make one less resistant to pain. The officers tried bringing § 87(2)(b) to the ground by grabbing his leg but were unable to. They eventually placed the handcuffs on him, after which his resistance stopped. Sgt. Xylas had no independent recollection of § 87(2)(b)'s breathing being restricted. He only observed § 87(2)(b) stating that he could not breathe on another officers' BWC, while § 87(2)(b) was in the rear of an RMP and not making contact with any officers.

PO Husbands's statement (**BR08**) was generally consistent with Sgt. Xylas's regarding § 87(2)(b)'s behavior and the circumstances making the situation dangerous. PO Husbands added that, while resisting, § 87(2)(b) was tensing his body, bringing his center of gravity toward the ground, moving his arms around, and keeping them arms in front of him. PO Husbands did not testify that Sgt. Xylas deployed his Taser a second time. After about a minute and a half of struggling, the officers placed § 87(2)(b) in handcuffs. PO Husbands did not make contact with § 87(2)(b)'s throat or windpipe. He did not see any other officer do so. PO Husbands did not do anything that could have restricted § 87(2)(b)'s breathing, nor did he hear § 87(2)(b) complaining of being unable to breathe. PO Husbands did not remember if § 87(2)(b)'s clothes was damaged as a result of the scuffle.

PO Rodriguez's statement (**BR09**) was generally consistent with Sgt. Xylas's regarding § 87(2)(b)'s behavior and the circumstances making the situation dangerous. He added that while resisting, § 87(2)(b) was flaring his arms, pushing the officers, and trying to run away. When Sgt. Xylas deployed the Taser a second time, the wiring from the cartridge caused him to feel the impact of the Taser. PO Rodriguez let go of § 87(2)(b) and, once he regained feeling on his hand after a few seconds, placed the handcuffs on § 87(2)(b)'s right wrist. PO Rodriguez did not recall making any contact with § 87(2)(b) that could have restricted his breathing. He did not make contact with § 87(2)(b)'s throat or windpipe. PO Rodriguez did not see any other officer restricting § 87(2)(b)'s breathing or making contact with his throat or windpipe. PO Rodriguez did not ever hear § 87(2)(b) say that he could not breathe. During the scuffle, PO Rodriguez ripped § 87(2)(b)'s shirt as he grabbed his shoulder to bring his body backwards. PO Rodriguez did not intend to rip § 87(2)(b)'s shirt. He was unaware of any other item of § 87(2)(b)'s clothing ripping.

Patrol Guide Procedure 221-01 states that when determining if force is reasonable, uniformed members of service should consider the following: “The nature and severity of the crime/circumstances, Actions taken by the subject, Duration of the action, Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, Whether the subject is actively resisting custody, Whether the subject is attempting to evade arrest by flight, Number of subjects in comparison to the number of MOS, Size, age, and condition of the subject in comparison to the MOS, Subject's violent history, if known, Presence of hostile crowd or agitators, Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.” This procedure defines a chokehold as any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air, which is prohibited (**BR12**).

Patrol Guide Procedure 221-02 states that when a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should comply with P.G. 221-01 and do the following: Take necessary action to protect life and personal safety of all persons present, including subjects being placed into custody and utilize de-escalation techniques when

appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, among other additional steps (**BR13**).

Patrol Guide Procedure 221-08 states that when a member of service is considering the use of a conducted electrical weapon (CEW), they must consider the totality of the circumstances and decide if such a use of force is reasonable and necessary to overcome resistance when effecting an arrest or taking an emotionally disturbed person into custody. Specifically, they should consider the factors noted in PG 221-01—including, but not limited to, the nature and severity of the circumstances, as well as the actions taken by the subject. If possible, officers should issue a verbal warning to the intended subject and other members of service present prior to discharging the CEW (**BR14**).

Sgt. Xylas and PO Rodriguez's BWC capture § 87(2)(b) bringing his arm down, in a striking motion, when Sgt. Xylas tried to grab him after § 87(2)(b) repeatedly refused to get off the street. § 87(2)(b) attempted to flee from the officers and apparently tried to strike them when initially making physical contact. Although Sgt. Xylas did not announce using his Taser prior to initially deploying it, he held it up and pointed it at § 87(2)(b) for over five seconds, at which point § 87(2)(b) began running away. The Taser was ineffective and even with PO Husbands and PO Rodriguez holding § 87(2)(b) he was consistently stiffened his body and was unable to be controlled. As the officers continued struggling, § 87(2)(b) repeatedly told the officers, "I'm about to swing on you bitches." Sgt. Xylas announced using his Taser prior to deploying it again, which was ineffective. Multiple factors in this case—immediacy of threat, actions taken by the civilian, attempt to flee custody, active resistance, and apparently under the influence of a drug/narcotic—§ 87(2)(g), in addition to the fact that three male officers struggled for over two minutes to place one male into handcuffs, § 87(2)(g)

Sgt. Xylas's BWC, which captures the entire struggle prior to § 87(2)(b)'s restraint, does not capture any officer making contact with § 87(2)(b)'s head, neck, or throat. He is not captured saying he could not breathe or gasping at any point in the struggle. § 87(2)(g)

PO Rodriguez's BWC shows that, during the struggle, he rips § 87(2)(b)'s shirt. Given that the rip occurred when PO Rodriguez using § 87(2)(g) force to take § 87(2)(b) into custody, § 87(2)(g)

§ 87(2)(g). There is no evidence of any other item, aside from § 87(2)(b)'s t-shirt, that was ripped; § 87(2)(g) (b)

**Allegation (H) Offensive Language: An officer made remarks to § 87(2)(b) based upon race.**

**Allegation (I) Discourtesy: An officer spoke discourteously to § 87(2)(b)**

Neither PO Husband's (**BR02, BR03**), PO Rodriguez (**BR02, BR04**), nor Sgt. Xylas's BWC (**BR02, BR05**) videos capture anyone referring to § 87(2)(b) as a monkey.

§ 87(2)(b) (**BR06**) stated that as Sgt. Xylas deployed the Taser, either PO Husbands or PO Rodriguez called § 87(2)(b) a "monkey."

PO Husbands (**BR08**) and PO Rodriguez (**BR09**) denied calling § 87(2)(b) a "monkey" at any point or hearing anyone address him as such.

Sgt. Xylas did not hear anyone referring to § 87(2)(b) as a monkey.

Sgt. Xylas, PO Husbands, and PO Rodriguez's BWC clearly capture the audio in this incident when Sgt. Xylas deployed his Taser; however, none of the officers are heard calling § 87(2)(b) a monkey. § 87(2)(g)

**Allegation (J) Abuse of Authority: Police Officer Aaron Husbands threatened § 87(2)(b) with the use of force.**

**Allegation (K) Force: Police Officer Aaron Husbands used physical force against § 87(2)(b).**

**Allegation (L) Force: Police Officer Benjamin Rodriguez used physical force against § 87(2)(b).**

**Allegation (M) Force: Police Officer Benjamin Rodriguez used physical force against § 87(2)(b).**

**Allegation (N) Force: Police Officer James Lester used physical force against § 87(2)(b).**

**Allegation (O) Force: Detective Jared Lambert used physical force against § 87(2)(b).**

PO Rodriguez's BWC (BR02, BR04) captures PO Husbands, PO Lester, and PO Rodriguez attempting to place § 87(2)(b) in the rear of an RMP at the 04:55 mark. § 87(2)(b) is standing outside of the vehicle and asks why they are putting him in the vehicle. He refuses to enter by moving his body around as the officers bring him closer to the vehicle. The officers push § 87(2)(b)'s back into the vehicle, but rest of his body remains outside. PO Rodriguez walks around to the opposite side of the vehicle, where he opens the door and pulls § 87(2)(b) inside.

Sgt. Xylas's BWC (BR02, BR05) also captures § 87(2)(b) being placed into the RMP. His footage captures the incident after PO Rodriguez walked around the vehicle. At the 04:55 mark, PO Lester and PO Husbands push § 87(2)(b) into the vehicle from behind. § 87(2)(b)'s body remains straight, preventing his entry into the vehicle. § 87(2)(b) turns around and tells PO Husbands to "cut it out." At the 04:59 mark, while grabbing § 87(2)(b) PO Husbands draws his right hand back, in a fist. Sgt. Xylas pulls PO Husbands back. PO Husbands lets § 87(2)(b) go and PO Lambert takes his place in pushing § 87(2)(b) into the rear of the RMP.

§ 87(2)(b) (BR06) testified that, once he was in handcuffs, Sgt. Xylas, PO Husbands, and PO Rodriguez aggressively carried him into the rear of a police vehicle. As § 87(2)(b)'s head was inside of the vehicle, PO Husbands pulled his arm back, as if he was going to punch § 87(2)(b). He quickly conducted a "punching motion," without actually hitting § 87(2)(b) but attempting to making him flinch.

PO Husbands (BR08) testified that he assisted in placing § 87(2)(b) into the RMP after he was handcuffed. PO Husbands held § 87(2)(b) against the vehicle. § 87(2)(b) refused to enter by tensing his body. PO Husbands attempted to push § 87(2)(b) inside of the vehicle. He had his hand clenched in a fist, which he intended to use to push § 87(2)(b) but an officer got between him and § 87(2)(b) preventing the push. Additionally, someone pulled him back before he could push § 87(2)(b). PO Husbands did not intend to threaten § 87(2)(b) with force or punch § 87(2)(b).

PO Rodriguez (BR09) assisted PO Lester and PO Lambert in placing § 87(2)(b) in the rear of an RMP. While on the rear-passenger side of the RMP, PO Rodriguez attempted to push § 87(2)(b) into the vehicle by his handcuffs, which was unsuccessful. He went around the RMP, on the opposite side where § 87(2)(b) was standing, and pulled him inside of the vehicle by both of his shoulders, which resulted in § 87(2)(b) getting fully into the vehicle.

PO Lester (BR15) testified that § 87(2)(b) was already in handcuffs upon his arrival at the location. PO Lester did not remember who brought § 87(2)(b) to his RMP, but he and PO Lambert were the officers that placed § 87(2)(b) in the vehicle. § 87(2)(b) was being aggressive—resisting, stiffening up his body, pushing off of the vehicle, and refusing to comply with orders to step into the vehicle. PO Husbands assisted the officers in handling § 87(2)(b). After a short time, they were able to get him into the back seat. The officers were able to grab § 87(2)(b) by the arms and place him inside.

PO Lambert (BR16) testified that when he and PO Lester arrived on scene, § 87(2)(b) was already in handcuffs. PO Lester and another officer that PO Lambert did not recall tried to place § 87(2)(b) in the rear of PO Lambert's RMP given that it was caged. The officers were



having a hard time because § 87(2)(b) was resisting—pushing off of officers’ grasps and not following orders to enter the vehicle. § 87(2)(b) was screaming and yelling. PO Lambert assisted PO Lester in overcoming § 87(2)(b)’s resistance by pushing him into the vehicle. § 87(2)(b) sat down inside of the vehicle after PO Lambert became involved.

Sgt Xylas (BR07) testified that he called for additional units after § 87(2)(b) was placed in handcuffs. Multiple officers helped § 87(2)(b) into the rear of an RMP. Apart from PO Husbands, Sgt. Xylas did not remember who was specifically involved. § 87(2)(b) refused to enter the vehicle, planking his body so that he could not be seated. PO Husbands became agitated while he pushed § 87(2)(b) into the vehicle. PO Husbands postured back with his arm, and Sgt. Xylas pulled him away because he did not know what PO Husbands was going to do.

Patrol Guide Procedure 221-01 states that when determining if force is reasonable, uniformed members of service should consider the following: “The nature and severity of the crime/circumstances, Actions taken by the subject, Duration of the action, Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, Whether the subject is actively resisting custody, Whether the subject is attempting to evade arrest by flight, Number of subjects in comparison to the number of MOS, Size, age, and condition of the subject in comparison to the MOS, Subject’s violent history, if known, Presence of hostile crowd or agitators, Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.” (BR12).

Patrol Guide Procedure 221-02 states that when a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should comply with P.G. 221-01 and do the following: Take necessary action to protect life and personal safety of all persons present, including subjects being placed into custody and utilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, among other additional steps (BR13).

Although § 87(2)(b) was stiffening his body while the officers attempted to place him into the police vehicle, he was in handcuffs, in addition to being held and pushed into the vehicle by two officers. § 87(2)(b) was not making any threatening statements or actions toward the officers, which could have warranted the use of force for defensive purposes. Given § 87(2)(b)’s physical resistance, the officers pushing him into the vehicle were justified, as it served a law enforcement purpose—to get him into the vehicle. However, as supported by Sgt. Xylas’s statement and the actions captured in his BWC, PO Husbands apparently drew his arm back as if to strike § 87(2)(b) which did not result in § 87(2)(b) getting into the vehicle nor did it gain his compliance. Sgt. Xylas intervening to pull PO Husbands back, and the fact that no other officers demonstrated a similar level of force, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (P) Abuse of Authority: Police Officer Benjamin Rodriguez searched the vehicle in which § 87(2)(b) was an occupant.**

There is no video footage capturing an inventory search of § 87(2)(b)’s vehicle. § 87(2)(b) (BR06) testified that when he retrieved his vehicle from the precinct after his arrest, there were multiple items moved out of place. He had debit cards in the center console that were missing, and he had to get replaced. He did not see the officers searching his vehicle, but it was “trashed” when he regained possession.

PO Rodriguez (BR09) drove § 87(2)(b)’s vehicle back to the stationhouse. Since § 87(2)(b) left his door open and the keys inside, PO Rodriguez was able to easily access the vehicle.

PO Rodriguez parked the vehicle in front of the precinct and conducted an inventory search. The search was procedural and done to every vehicle brought back to the precinct, for the purposes of safeguarding the items inside. PO Rodriguez conducted the search alone. The vehicle was vouchered, as well as the property inside. PO Rodriguez did not prepare the vouchers. PO Husbands, who was the arresting officer, would have been in charge of vouchering.

PO Husbands (**BR08**) testified that PO Rodriguez drove § 87(2)(b)'s vehicle to the stationhouse. An officer searched the vehicle at the stationhouse, but PO Husbands did not remember who. He did not search § 87(2)(b)'s vehicle. The vehicle was not vouchered because the vehicle was not in § 87(2)(b)'s name and was claimed by his mother. PO Husbands was unaware if there was anything recovered from the vehicle.

Sgt. Xylas (**BR07**) testified that he was not certain if § 87(2)(b)'s vehicle was vouchered. Sgt. Xylas did not voucher the vehicle himself. He believed an officer conducted an inventory search of § 87(2)(b)'s vehicle, but he did not recall who did so or if he instructed the officer(s) to do so.

The investigation received negative results for any property vouchers prepared for § 87(2)(b) on May 18, 2021 (**BR17**).

People v. Gomez, 13 N.Y.3d 6 found that an inventory search is designed to catalogue the contents of the item searched in an inventory list in order to protect the police against any claim of lost property, and to protect police personnel and others from any dangerous instruments. An inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. Such search should be conducted pursuant to an established standard procedure that ensures the search is conducted consistently and reasonably (**BR18**).

Patrol Guide Procedure 218-13 notes that whenever any property, including a vehicle, is brought into the custody of the Department, a thorough inventory search must be conducted. During an inventory search of an automobile, officers are required to search the interior of the vehicle thoroughly, as well as the trunk. The officer(s) must remove all valuables from the vehicle and invoice them on a separate property clerk invoice (**BR19**).

Although that there are no BWC videos capturing the search of § 87(2)(b)'s vehicle, PO Rodriguez stated that he conducted an inventory search and confirmed that he did not prepare any property vouchers. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (BR22).
- Sgt. Xylas has been a member of service for 13 years. He has been named a subject in 15 other CCRB complaints and 35 allegations, four of which have been substantiated:
  - § 87(2)(g)
- PO Husbands has been a member of service for four years. He has been the subject of three other CCRB complaints and five allegations, none of which have been substantiated. § 87(2)(g)
- PO Rodriguez has been a member of service for four years. He has been the subject of one other CCRB complaint and 11 allegations, none of which have been substantiated. § 87(2)(g)
- PO Lester has been a member of service for seven years. He has been the subject of two other CCRB complaints and two allegations, none of which have been substantiated. § 87(2)(g)
- PO Lambert has been a member of service for six years. He has been the subject of three other CCRB complaints and four other allegations, none of which have been substantiated. § 87(2)(g)

#### Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- On May 16, 2022, the investigation received confirmation that § 87(2)(b) has not filed a notice of claim regarding this incident (BR24).
- § 87(2)(b)

Squad: 10

Investigator: Jessica Russo      Investigator Jessica Russo      06/17/2022  
Signature      Print Title & Name      Date

Squad Leader: Maura R. Roche      IM Maura R. Roche      06/21/2022  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date